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C O N F I D E N T I A L SECTION 01 OF 03 NAIROBI 005240

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SUBJECT: AMBASSADOR RAISES ISSUES OF U.S. CONCERN WITH NEW FOREIGN MINISTER

REF: STATE 226663

Classified By: PolCouns Michael J. Fitzpatrick; Reasons: 1.4 (b,d)

1. (C) SUMMARY: The Ambassador raised several issues of concern in our bilateral relationship during December 20 meeting with newly appointed Minister of Foreign Affairs Raphael Tuju, including: counter-terrorism, Article 98, Rewards for Justice, travel warnings, narcotics, public corruption, and U.S. engagement on Somalia. Tuju expressed a commitment to cultivate a constructive relationship with the U.S. Although Tuju said the right things, he was clearly nervous about the potential for USG commentary on Kenya's poor governance and anti-corruption record. END SUMMARY.

2. (U) Ambassador called on newly installed Minister of Foreign Affairs Raphael Tuju in his office the morning of December 20. (NOTE: Tuju was appointed to the post December 7, following the dismissal of the entire cabinet after the government lost November's constitutional referendum. END NOTE.) Poloff accompanied as notetaker. Also present were Moses Wetangula, Assistant Minister for Foreign Affairs; Ambassador M.K. Mithiri, Americas Desk Head; Daniel Tanui, Americas Desk First Secretary; and a representative from the ministry's internal press department.

Moving the Counter-Terrorism Agenda Forward

3. (C) The Ambassador expressed U.S. frustration with Kenya's halting efforts to improve its ability to combat terrorism. Specifically, he drew attention to the absence of counter-terrorism legislation and the necessary legal tools to strengthen the capacity of the Kenyan Police Service and the Department of Public Prosecutions to bring terrorist suspects to justice. The Ambassador also cited stalled movement on the Joint Terrorism Task Force (JTTF), despite a July meeting with the President in which Kibaki expressed his support for the JTTF. The Ambassador suggested that if the framework of the JTTF was not appropriate for Kenya, the U.S. is prepared to assist Kenya develop a more appropriate counter-terrorism framework.

4. (C) Tuju acknowledged that terrorism is a serious issue in Kenya: "it hurts tourism, hurts Kenya, and erodes public confidence in Kenya's security system." Tuju promised to follow up with President Kibaki on the status of the JTTF and report back. He said the perception that proposed counter-terrorism legislation would disproportionately target Muslims had led to resistance to the bill in cabinet, parliament, and the public sphere. (NOTE: According to Tuju, former Heritage Minister Najib Balala threatened to resign from Cabinet unless the counter-terrorism legislation was withdrawn. Balala was one of those ministers not reappointed this month. END NOTE.) Tuju stated that the Kenyan government must carefully navigate the issue to account for this sensitivity. Concerns that resistance to the legislation would cause the bill to fail caused the Government to delay its introduction in parliament. (COMMENT: In other words, the GOK position has not changed in two years. END COMMENT.)

Selling Article 98

5. (C) The Ambassador identified an Article 98 non-surrender agreement as a priority for the U.S. government and appealed to Tuju to work toward bringing Kenya on board. Tuju explained that Kenyan sensitivities to perceived coercion complicate this issue. The loss of military aid under U.S. law is perceived by many as "bullying" by the U.S. Congress and Administration. Tuju suggested a more productive approach would be to sell such an agreement as good for the broader Kenya-U.S. relationship, highlighting the strengths and benefits of U.S. engagement in Kenya as a partner, rather than focusing on the consequences of not signing an agreement. He expressed a willingness to help improve Kenyan perceptions of the United States.

Concerns over Cocaine and Corruption

16. (C) The Ambassador then noted a potential perception problem for the Kenyan government. The botched handling and long-delayed destruction of the 1.1 ton December 2004 cocaine seizure has raised concerns about the integrity of the seizure and the officials charged with its safekeeping. Tuju readily acknowledged that this was a problem. He said the presence of such a large quantity of drugs indicated the route was a preexisting one, in use for some time for similar shipments. Such a route could not exist without the involvement of high-ranking government officials. He declined to speculate as to which officials were involved, but stated that there was a drug trafficking connection between elements in the current and former regimes. Tuju offered to raise our concerns with relevant officials, but emphasized that he would be "treading on dangerous ground." If the "drug lords" discovered he was making inquiries, they would not hesitate to "rub someone out." The Ambassador renewed our offers of assistance to dispose of the drugs and suggested that Kibaki publicly destroy the haul as a deft public diplomacy maneuver.

Felicien Kabuga

17. (C) An additional perception problem for Kenya is the suspicion that Rwandan genocidiare Felicien Kabuga continues to enjoy refuge in Kenya. The Ambassador recounted how, following tips from international sources, Kenyan law enforcement authorities' efforts to arrest Kabuga were repeatedly thwarted by tip-offs seemingly from within the GOK. The Ambassador stressed the importance of greater Kenyan cooperation in locating and arresting the international fugitive and reiterated that the U.S. is prepared to offer discrete assistance if desired.

Travel Warning: Business as Usual

18. (C) The Ambassador informed Tuju that the travel warning would likely be renewed with the same language in January of next year. Tuju agreed that over-reaction to the warning will only serve to draw attention to it, and thus possibly negatively impact the tourist trade. Wetangula shared that the travel warning is an obstacle to securing an Article 98 agreement. Whenever he approaches members of parliament (MPs) on the issue of Article 98, they respond first by complaining about the travel warning.

Somalia

19. (C) The Ambassador explained that the U.S. is engaged on Somalia, despite public misperceptions to the contrary. He informed Tuju that the U.S. is currently conducting a major policy review and cautioned against international pressure to back a particular faction rather than working to empower the Somalis to resolve their issues among themselves. Tuju did not yet seem up to speed on Somalia.

Sudan and the AU Presidency

110. (C) The Ambassador asked if Kenya had heard rumors that Sudanese President Bashir might seek the presidency of the African Union (AU) when it meets in Khartoum early next year (ref A). He asked if conflicts of interests might arise from this. Tuju stressed that Kenya had little influence over the decision, as it is traditional for the host nation to hold the Presidency of the AU and all AU members have equal interests in the post. Nevertheless, Tuju said that he would look into the possibility that an alternative president could avoid the potential for a conflict of interest.

Open Diplomacy: Shutting the Media Out

111. (C) Tuju requested a "period of constructive engagement" to allow Kenya to work on important issues with the U.S. Tuju asked that we bring to him directly any issues or concerns we may have and avoid airing our concerns publicly, which he dismissed as counterproductive. While acknowledging Tuju's openness and willingness to make himself available, the Ambassador noted that the U.S. public diplomacy mission requires us to occasionally speak out on particular topics, namely governance and corruption, and that we would continue to do so. The Ambassador offered to keep Tuju advised of our concerns and work to avoid any surprises.

COMMENT

112. (C) Tuju is a major improvement over his predecessor, and we do not doubt that he is serious about working constructively with us on bilateral issues. His nervousness over any USG outspokenness on GOK governance and anti-corruption failures is interesting. It no doubt reflects the broader GOK view that the USG (and other donors) can influence public opinion and generate popular pressure for change and reform) pressure the Kibaki government would rather avoid. Tuju, now the sole Luo in the entire cabinet, has firmly planted himself on Kibaki's side of the political divide and is not likely to do anything that could cause offense to his political masters. END COMMENT.
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